THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.31106 of 1998

Dated:22.08.2007

Between
The Achyutapuram PACS, rep., by its
President K.Veera Raju

.....Petitioner

and

1.The Collector,Khammam,
Khammam District and others.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.31106 of 1998

ORDER:

This writ petition is filed seeking to call for the records relating to the order passed in Case APSE No.MP 1/97 dated 29.11.1997 by 1st respondent and to declare the same as arbitrary and illegal.

The petitioner is the employer. 2nd respondent is the employee. It appears that 2nd respondent joined the service of PACS Achyutapuram, East Godavari in the year 1975 as an Attender. He was made to retire from service, according to the employer, on 31.10.1996, on attaining the age of superannuation at 58 years, as per bye-law No.6 of the special bye-laws of the Society. Aggrieved by the same, 2nd respondent

approached the authority appointed under Section 50 of the AP Shops and Establishments Act, 1988 (for short 'the Act'), cum Labour Officer, Rajahmundry, East Godavari District in APSE No.MP1/97 dated 29.11.1997. Before the authority, 2nd respondent stated that he is entitled to continue up to 60 years of age, pension in the last grade service of the society and only the paid secretaries and other officers in the society retire on attaining the age of 58 years. Therefore, terminating the services of the petitioner with effect from 31.10.1996 as arbitrary and illegal and contrary to the provisions of AP Co-operative Societies Act and Rules made thereunder.

The petitioner herein filed a detailed counter resisting the claim of the 2nd respondent. It is stated that the services of 2nd respondent were not terminated, he retired from service on attaining the age of superannuation with effect from 31.10.2006

and he is not entitled to continue beyond 58 years as claimed by him. Further, the very petition is not maintainable, since PACS Atchthapuram is not amenable to the jurisdiction of the Authority under the AP Shops and Establishment Act, 1988.

On behalf of 2nd respondent, he examined himself as AW1 and also examined K.Appa Rao as AW2 and marked Exs.A1 to A6. On behalf of the petitioner-opposite party, RWs.1 to 3 were examined and Exs.R1 to R6 were marked.

After a detailed consideration of both oral and documentary evidence, the Authority came to the conclusion that the petitioner is entitled to continue up to 60 years of age and the termination of service of the petitioner on 31.10.1996 is arbitrary, illegal and contrary to the provisions of the AP Co-operative Societies Act and the petitioner-opposite party was directed to deposit a sum of Rs.35,198-00 towards salary and other allowances for the

remaining period of two years. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner strenuously contended that an application under Section 50 of the Act before the Authority itself is not maintainable and PACS is not amenable to the jurisdiction of the Authority under the Act.

There is no necessity to go into all the details. It is well settled principle that a Cooperative Society is an establishment and is amenable to the jurisdiction of the AP Shops and Establishments Act. Insofar as the termination of services of the petitioner is concerned, RW1 and RW2, who were examined before the Authority, have stated that the society is not paying minimum wages and VDA. Further, they have also admitted that AW1 was not given any notice and was not paid the salary for October 1996 and other terminal benefits so far. In the cross examination of RW2 he had admitted that the

applicant had worked in the society and date of birth of the applicant is not available in the society though he worked as a President from 1982 to 1985 and during that period also the applicant was terminated from service and later he was reinstated as per the orders of the Labour Court, Vizag. He also admitted that he was not a member of the society when the applicant had joined in the society and he did not know in whose period the applicant had joined in the society. He also stated that he could not produce the minutes book for the year 1961 as the same was not traced out by him. He further admitted that the terminal benefits of the applicant were not yet paid and the salary from 1.10.1996 to 5.11.1996 was also not paid to the applicant. It was pleaded that the petitioner was made to retire with effect from 31.10.1996, on attaining the age of 58 years. As per Rule 28 (6) of AP Co-operative Societies Rules 1964 (for short “the Rules”) which states that every paid servant

and officer of a society, other than those in the last grade service, shall retire from service on the afternoon of the last date of the month in which he attains the age of 58 years.

In this case, the admitted fact is that the services of the petitioner were sought to be terminated on 31.10.1996, but no such orders were passed on the ground that he attained the age of superannuation of 58 years as on that date. Rule 28(6) of the Rules is very clear insofar as last grade services are concerned. The persons in the last grade service cannot be retired from service after 58 years, they are entitled to continue up to 60 years. Therefore, the conclusions arrived at by the Authority cannot be said to be either arbitrary, illegal or without any jurisdiction. Writ petition is devoid of merits and is liable to be dismissed.

Writ petition is accordingly dismissed. No costs.

_____

22-08-2007

rkk